

2011 Montana Legislature

BILL NO.

INTRODUCED BY

(Primary Sponsor)BY REQUEST OF

A BILL FOR AN ACT ENTITLED: "AN ACT **DISCUSSION DRAFT*** DISCUSSION DRAFT*** DISCUSSION DRAFT*** DISCUSSION DRAFT*** DISCUSSION DRAFT**

Summary: The purpose of the legislation is to give an incentive for the development of community well supply systems as a feasible and economic alternative to development by way of a proliferation of single exempt wells for each home. The legislation also links to the conservation of water in community well settings by restricting the amount of landscaping and garden irrigation that can occur in a development falling within the provisions of the proposed legislation. While the proposed legislation does not provide numerical caps as to homes or lot sizes, larger developments would be forced towards zero-landscaping in order to get a potable supply for domestic use. The proposed legislation requires monitoring of the water development and annual reports to the DNRC to ensure the statutory caps are not exceeded.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-306, MCA, is amended to read:

"85-2-306. Exceptions to permit requirements. (1) (a) Except as provided in subsection (1)(b), ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works.

(b) If another person has rights in the ground water development works, water may be appropriated with the written consent of the person with those property rights or, if the ground water development works are on national forest system lands, with any prior written special use authorization required by federal law to occupy, use, or traverse national forest system lands for

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**WATER POLICY INTERIM
COMMITTEE
JULY 27, 2010
EXHIBIT 12**

the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the certificate.

(c) If the person does not have a possessory interest in the real property from which the ground water may be appropriated, the person shall provide to the owner of the real property written notification of the works and the person's intent to appropriate ground water from the works. The written notification must be provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice requirement only and does not create an easement in or over the real property where the ground water development works are located.

(2) Inside the boundaries of a controlled ground water area, ground water may be appropriated only:

(a) according to a permit received pursuant to 85-2-508; or

(b) according to the requirements of a rule promulgated pursuant to 85-2-506.

(3) (a) (i) Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit.

(ii) Outside the boundaries of a controlled ground water area, a permit for a public water supply system, as defined in §75-6-102(13), is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of not to exceed 150 gallons a minute or less, and not to exceed 20 acre-feet a year, provided garden and landscaping irrigation does not exceed 1/3 acre per lot, except that a combined appropriation for the public water supply system from the same source from two or more wells or developed springs, excluding a back-up or redundant well that exceeds these limitations requires a permit. The exemption provided in subsection (3)(a)(i) may not be used within the boundaries of a public water supply system that has a water right under this subsection.

(b) (i) (A) Within 60 days of completion of the well or developed spring under subsection (a)(i) and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department through its offices.

(B) Within 60 days of completion of the well for the public water supply system under subsections (a)(ii), the appropriator shall file a notice of completion of the well with the department on a form provided by the department through its offices. The form shall include documentation of a monitoring plan to ensure that the rate and volume caps are not exceeded. Monitoring data must be submitted to the department on an annual basis. The form shall include a certified statement documenting the calculation used by the applicant to verify how the proposed public water supply system will be developed within the limits of the exemption. No longer than 20 years after receiving a certificate of water right under subsection (ii), the appropriator shall file a notice of perfection for the amount of water perfected through the public water supply system. The water right for the volume of water not put to beneficial use within 20 years lapses by operation of law.

(ii) (A) Upon receipt of the notice under (b)(i)(A) or (b)(i)(B), the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(B) Upon receipt of the notice of perfection, the department shall file the notice of perfection and, if necessary, issue an amended certificate of water right for the volume of water put to

beneficial use.

(iii) If a notice of completion is not corrected and completed within the time allowed, the priority date of appropriation is the date of refiling a correct and complete notice with the department.

(c) A certificate of water right or an amended certificate of water right may not be issued until a correct and complete notice has been filed with the department, including proof of landowner notification or a written federal special use authorization as necessary under subsection (1). The original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(4) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

(5) An appropriation under subsection (4) is an existing right, and a permit is not required. However, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(6) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if:

- (a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;
- (b) the appropriation is less than 30 acre-feet a year;
- (c) the appropriation is from a source other than a perennial flowing stream; and
- (d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger.

(7) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Subject to subsection (7)(b), upon receipt of a correct and complete application for a stock water provisional permit, the department shall automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

(b) If the impoundment or pit is on national forest system lands, an application is not correct and complete under this section until the applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

(8) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the department under 85-2-113."

NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.